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INDIGENOUS ISSUES

Human rights and indigenous issues

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57

Addendum

Selected summaries of communications examined by the Special Rapporteur in 2001/2002

1. During the six months (August 2001-January 2002) since he assumed his mandate, the Special Rapporteur has received communications, examined numerous documents, and consulted with government officials and delegates, representatives of indigenous peoples and non-governmental organizations. From this material he has drawn a preliminary sample of issues and alleged violations of the human rights of indigenous peoples that are of current concern in numerous countries. The following summaries represent but a small selection of cases to which his attention has been drawn.

2. The alleged facts presented in this addendum are based on reputable and credible sources. The Special Rapporteur has not been able to verify independently the allegations and conclusions reached by the authors of these documents and statements, and withholds any personal interpretation and judgement. The cases are presented for information purposes only, and the Special Rapporteur welcomes additional information that may become available on these and other cases.

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3. *Case 1.* The Special Rapporteur has received a report from the Government of **Argentina** that provides valuable information on recent developments in that country. Ten years after the adoption of a law on the indigenous in 1985, the national Constitution was reformed to include the legal recognition of indigenous communities and the rights of indigenous peoples. This was followed by further legislation and the ratification of international instruments concerning indigenous peoples. (ILO Convention No. 169 was ratified in July 2001). The country's almost 800 indigenous communities now have registered legal status. While the law permits both individual and collective land titling, the great majority of the indigenous communities have opted for communal landholding in all of the country's regions. The government report states that further legislative development is needed to achieve equal status between indigenous communities and the rest of society.

4. An extensive study on the situation of the indigenous peoples of Argentina, by an academic research unit, points out that local and regional jurisprudence has not yet been adapted to legislative changes at the national level, leading, in some instances, to a legal vacuum which does not benefit indigenous people. This lacuna affects collective land rights of indigenous communities, their right to participate in development efforts, the administration of justice, the provision of social services, and other areas where indigenous human rights are allegedly not being adequately protected. The report includes a description of three major development projects undertaken in recent years in which indigenous rights have not been taken into consideration. This very comprehensive evaluation of the situation of indigenous peoples concludes with a number of constructive recommendations that appear to the Special Rapporteur to be quite reasonable and feasible.[1]

5. *Case 2.* The Chiquitano people of **Bolivia** are struggling to obtain State protection of their lands, as guaranteed in the relevant national legislation. The lives of their leaders and legal advisers have allegedly been threatened by the employees of a private company that is illegally cutting down their forest reserve. The Special Rapporteur and Ms. Hina Jilani, the Special Representative of the Secretary-General for human rights defenders, have addressed an urgent appeal to the Government of Bolivia on this matter.

6. *Case 3.* Indigenous land rights are also a crucial issue in the eastern Amazon area of **Brazil**, where multimillion-dollar development projects, with international financing, have attracted settlers and loggers who are threatening the survival of several indigenous peoples, among them the Awá. Survival International For Tribal Peoples, a London-based non-governmental organization, has extensively documented these cases and demands urgent long-term and effective protection measures, and the strict application of the World Bank's Operational Directive 4.20. Also in the Amazon area, several indigenous peoples are asking for the demarcation of their traditional homelands in accordance with existing legislation and their return to lands from which they had been forcibly removed in previous years. Among them are the Kayabi of the Baixo Rio Teles Pires area and a group of Krahô Indians in Maranhão State.[2]

7. *Case 4.* In south central **British Columbia, Canada**, the Secwepemc people are attempting to protect their traditional land, which they use in a multifaceted way, from the planned expansion of a ski resort. They base their case on the fact that the Supreme Court of

Canada recognized the collective proprietary interests of indigenous peoples as Aboriginal Title in a 1997 decision. Similar situations have been reported regarding Alaska, the Philippines and Ecuador.[3]

8. *Case 5.* A more complex situation is that of indigenous peoples in **Colombia** who are victims of the civil war between the Government of Colombia and revolutionary movements such as the FARC (Fuerzas Armadas Revolucionarias de Colombia). Their leaders and spokespersons have been threatened, persecuted, arrested and killed by paramilitary groups, guerrillas, or members of the police or armed forces (not to mention in drug traffic-related violence). In this context, the human rights of indigenous communities are widely abused, and urgent protective action has been sought by indigenous and human rights organizations worldwide.[4] The High Commissioner's report on the human rights situation in Colombia underlines the particularly serious situation of indigenous peoples such as the Emberá who have been victims of kidnapping, murder, forced displacement, threats and other abuses, allegedly committed by paramilitary groups, the armed forces and revolutionary organizations. These persistent and extensive human rights violations have also been documented by the Government's own human rights defender's office (Defensoría del Pueblo).[5]

9. *Case 6.* In northern **Ecuador** the Shuar people have suffered repercussions from the violence in neighbouring Colombia and the "war on drugs". A fact-finding mission organized by a group of non-governmental organizations in July 2001 reported increasing militarization in the area, environmental destruction, kidnappings, disappearances and killings of individuals and a general deterioration of social, economic and cultural conditions in the indigenous communities.[6]

10. *Case 7.* After 30 years of civil war, **Guatemala** signed a peace accord in 1996 in which the Government agreed to recognize the rights and culture of the indigenous Maya people. In September 2001 the United Nations Mission to Guatemala (MINUGUA) published a Verification Report, which concludes as follows:

> "89. After more than seven years since the Global Agreement on Human Rights took effect and almost five since the signing of the Agreement on a Firm and Lasting Peace, the Mission feels that little progress has been made in one of the most important areas for the consolidation of a democratic State that is inclusive, participatory and non-discriminatory. The ethnic diversity of the Nation is not yet recognized and valued as one of the greatest riches and the indigenous peoples continue to be subject to strong racial, ethnic and cultural discrimination which deprives them of the enjoyment of their basic human rights.
>
> "90. The excluding economic and social models, as well as the centralization of public investment have led to a situation in which broad sectors of the population living in rural areas are subjected to conditions of poverty and extreme poverty, especially the great majority of the country's indigenous peoples. At the same time, the high concentration of indigenous population in regions where the armed confrontation was the most intense has made these peoples the victims of the worst consequences of the conflict which devastated Guatemala for more than 30 years."[7]

11. *Case 8.* The Special Rapporteur has received communications from a number of indigenous and human rights associations in **Mexico** regarding the current situation of indigenous peoples in that country. In April 2000 the Chairperson of the Working Group on Indigenous Populations presented her report (E/CN.4/Sub.2/2000/40) of a visit she had undertaken to Mexico earlier in the year. The various recommendations she addressed to the Government of Mexico still appear to be valid. In 2001 the national Congress, elected in 2000, enacted a new article 2 of the Political Constitution of Mexico on indigenous rights and culture. This reform addresses several of the points that had been negotiated between the previous Government and the EZLN (Zapatista Army of National Liberation), but numerous indigenous organizations consider that it does not meet their aspirations and are asking for a complete review of the new law, which the President of Mexico himself and a number of federal deputies from various parties have also suggested.

12. Furthermore, indigenous peoples' organizations complain that they were not fully consulted on this matter, as they claim should have been done according to article 6, paragraph 1 (a) of ILO Convention No. 169, which Mexico ratified in 1990. After the ratification of the constitutional amendment, several hundred appeals were made to the Supreme Court to stop implementation of the reform on procedural grounds. At the time this is being written the Court has not yet handed down its decision.[8] Recently, in international bodies, the Government has supported the notion of the right of indigenous peoples to self-determination.

13. *Case 9.* In **Botswana** and **Namibia**, the Bushmen, numbering around 80,000, have been the victims of discriminatory practices and their survival as a distinct people is endangered by official assimilationist policies. Of particular concern is the fact that many groups have been dispossessed of their traditional lands to make way for game reserves and national parks. One non-governmental organization stated that "unless fundamental rights such as that to land ownership are recognized urgently, the situation of the Bushmen will deteriorate further".[9]

14. *Case 10.* In the wake of the genocide in **Rwanda** in the early 1990s, members of the Batwa community, considered as the indigenous people of the country, have suffered from persecution and reprisals. Some are languishing in jail, accused of acts of genocide in Rwanda. The historic links between Batutsi and Batwa made them vulnerable to attack by the Bahutu during the period of genocide. Between December 1993 and March 1994 at least 11 Batwa settlements were burned to the ground, the people attacked and some killed.[10]

15. *Case 11.* The Ogiek people of Kenya are a hunter-gatherer forest-dwelling community of approximately 30,000 people throughout the country. They are found mostly in the Mau Forest complex that straddles Great Rift Valley Province. The Ogiek have suffered from dispossession of their land, first by the colonial State, then by the Maasai, and lastly by their post-independence State. A more recent government action to this effect was the 1994 scheme to settle other landless people in the Mau Forest who have been encouraged to subdivide the land and register title deeds in their names. On two occasions, in 1997 and again in 2001, groups of Ogiek have challenged the Government's intention to dispossess them of their lands in the courts. While the court's decisions were favourable to the Ogiek, either directly or on appeal, the Government is still attempting to implement its decision to excise from areas traditionally occupied and held by the Ogiek large areas of land for private development.[11]

16. *Case 12.* In several North African countries (mainly **Algeria** and **Morocco**), the Amazigh people (also referred to as Kabyles, Touareg and Berbers), who consider themselves as indigenous to these countries, have been asking for official recognition of their language, culture and identity, as well as the full enjoyment of their civil and political rights.[12] After a rebellion in 1990, which actually started in **Niger**, the Touareg of **Mali** entered into a peace treaty with the Government in 1991, followed by one in 1992, to allow them regional self-governance and internal democracy, enabling the Government to grant autonomy to the northern areas of the country occupied by the Touareg.[13]

17. *Case 13.* While in Africa there is no consensus on the use of the term "indigenous", the African Commission on Human and Peoples' Rights has argued for the protection of the human rights of specific sectors of the population, for instance in a decision that involves the protection of the rights of black populations who allegedly are victims of discrimination by the Government of **Mauritania**. The African Commission argued that "language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and in its activities. To deprive a man of such participation amounts to depriving him of his identity ...".[14] It interpreted article 17 of the African Charter of Human and Peoples' Rights to mean that denying them the use of their language constituted discrimination against black Mauritanians and domination of one group over another, while article 23 (1) could be used to protect the villages of black Mauritanians against attack.

18. *Case 14.* The Ilois are currently identified as the indigenous people of the **Chagos Islands**, in the British Indian Ocean Territories, which were separated from Mauritius before its independence. Later, the Ilois were removed to make way for an American military base on Diego García. As the islands are still under British colonial rule, the Ilois appealed to the Supreme Council of the Judicature in London which decided on 3 November 2000 that their forcible removal from their land was unlawful. The Ilois are now preparing to go back to court to sue for compensation and restitution of their territory. The Human Rights Committee, at its seventy-third session in October 2001, stated:

> "Although [the British Indian Ocean Territory] was not included in the State Party's report (and the State Party apparently considers that, due to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State Party's acceptance that its prohibition on allowing the return of Ilois, who had left or been removed from the territory, was unlawful. The State Party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report" (CCPR/CO/73/UK-CCPR/CO/73/UKOT, para. 38).

19. *Case 15.* In the Central Highlands between **Viet Nam**, **the Lao People's Democratic Republic** and **Cambodia**, the indigenous Montagnard/Degar people have been involved in conflicts and become the victims of alleged human rights abuses over a period of many years. Montagnard asylum-seekers from Viet Nam have reportedly been expelled from Cambodia and may be at risk. OHCHR/Cambodia and the Office of the United Nations High Commissioner for Refugees have monitored the situation closely and the latter is involved in negotiations with

Cambodia and Viet Nam concerning the Montagnard refugees.[15] Around 600,000 highland refugees are reportedly scattered inside Laos and Thailand without any United Nations protection, facing arrests, detention and brutality.[16] The report of the Special Representative of the Secretary-General for Human Rights in Cambodia submitted to the General Assembly states that persons from the Central Highlands fled Viet Nam because of fear of persecution, because most of them "had taken part in … demonstrations in Viet Nam protesting the continuous confiscation of land by the Vietnamese Government since the end of the war in 1975" (A/56/209/para. 73).

20. In a number of South-East Asian countries the resettlement of indigenous peoples and ethnic minorities in highland areas is the result of "sedentarization" policies designed to further certain rural development objectives, without sufficient regard to the needs and aspirations of the communities thus affected. Regarding Viet Nam, the Committee on the Elimination of All Forms of Racial Discrimination has expressed concern "about the alleged population transfer to territories inhabited by indigenous groups, disadvantaging them in the exercise of their social, economic and cultural rights" and asked for more information on the matter (A/56/18, para. 421). There continue to appear reports of the use of force, land confiscations, forced sterilizations, killings and other forms of persecution of indigenous people in the area.[17] Similarly, the identity of the indigenous peoples, their cultures and their traditional way of living in Cambodia are reportedly seriously at risk, owing to violations of land and citizenship rights.[18] Some of the human rights abuses in the region occur within the framework of internal armed conflict, where anti-terrorism legislation and the granting of emergency powers not only delay the peaceful negotiation of differences but tend rather to further human rights abuses.[19]

21. *Case 16.* **Malaysia** has three main groups of indigenous peoples: the indigenous peoples of Sabah and Sarawak, who are covered by the "special provisions" in the Constitution, and the Orang Asli who are not covered by these provisions, but by specific legislation and administration. Although the 1954 Aboriginal Peoples Act, amended in 1967 and 1974, establishes certain rights for the Orang Asli, it mainly contains provisions restricting their rights to control their own lives. Orang Asli can live in specific lands and reserves, but cannot own them; authorities have the right to order an indigenous community to leave an area or to stay away; they can revoke or amend any declaration establishing an aboriginal reserve with no compensation; they have no obligation to pay compensation for the loss of land, nor any obligation to relocate the indigenous community or allocate alternative land. Thus, the Orang Asli have no security of tenure over their lands, but are reduced to being tenants at the will of the Government. State authorities do not grant or sell land to the Orang Asli and there is little help for them to obtain individual title to the lands on which they live. Even when their lands are gazetted (officially announced), they have few rights and little security. Development schemes, plantations, logging, and highway and dam projects often displace the Orang Asli from their land. Several planned large-scale settlements schemes proclaimed in the 1960 Land (Group Settlement Areas) Act are implemented in Orang Asli areas. Also, the Orang Asli do not have any exclusive rights over the plant life growing in their areas. Moreover, matters concerning the Orang Asli and their lands are decided without their participation.[20]

22. *Case 17.* Despite the existence of national legislation concerning the rights of indigenous and tribal peoples, the implementation of these laws in South-East Asia has been far from satisfactory. The Special Rapporteur has received information concerning a number of

violations of indigenous rights in several countries of the region. Indigenous representatives from the **Philippines** complain about the slow pace of implementation of the 1997 Indigenous Peoples Rights Act, arguing that the Government has not yet allocated funds for its operationalization.[21] Also, it is argued that the Act fails to fully protect indigenous lands from mining and logging. According to section 56, property rights within the ancestral domain already existing and/or vested under the Act, shall be recognized and respected. Thus, leases for logging and mining shall continue to exist, even if an area is identified as an ancestral domain under the Act.[22]

23. Other legislation allows turning indigenous lands into national parks and reserves for the sake of ecotourism. The new legislation severely curtails the former freedom of indigenous people to roam the forest and harvest its products to sell in the lowlands. Moreover, private interests and foreign investors have established activities in indigenous regions. In 2001, indigenous representatives reported to the Working Group on Indigenous Populations that two of the country's biggest companies had refused to compensate victims of disasters caused by their mining activities. Indigenous representatives state that despite many positive aspects of the Indigenous Peoples Rights Act, other legislation stops its effective implementation.[23]

24. In dealing with human rights issues raised by indigenous and human rights organizations, the Special Rapporteur takes note that while it is indigenous persons who suffer abuses, these violations generally occur because such persons are members of distinct indigenous communities, tribes or peoples, and that it is indigenous collectivities who are often singled out as victims of abuses such as land loss, environmental destruction, forced displacement, imposed assimilation, ethnocide and so forth. The collective rights of indigenous peoples are thus often placed at the centre of the issues that come to the attention of international agencies such as the WGIP, the ILO, the CERD and, most recently, the Special Rapporteur. These issues are being taken up increasingly by regional bodies as well, for instance the Inter-American Commission on Human Rights and the African Human Rights Commission

Notes

[1] Communication from the Government of Argentina to the Special Rapporteur (17 October 2001); Programa Permanente Universitario de Extensión, Investigación y Desarrollo en Comunidades Indígenas de Argentina, Universidad de Buenos Aires, *Informe sobre la Situación de los Pueblos Indígenas en Argentina*, October 2001.

[2] See the web site of the Conselho Indigenista Missionário: www.cimi.org.br, updated on 25 January 2002.

[3] Letter to the Office of the High Commissioner for Human Rights (OHCHR) by Interior Alliance, July 2001; communications to OHCHR by the Support Group for Indigenous Peoples, May-July 2001.

[4] Personal communication by representatives of Colombian indigenous organizations and international agencies working in the region. See also the report on the mission to Colombia to investigate the situation of indigenous peoples, 27 May-3 June 2001, organized by Rights and Democracy with the cooperation of the Assembly of First Nations, Canada.

[5] See E/CN.4/2001/15 and the Defensoría web site: http://www.defensoria.org.co.

[6] Communication "Taruka Report", sent to Special Rapporteur.

[7] MINUGUA. Misión de Verificación de las Naciones Unidas en Guatemala, Verification Report, The indigenous peoples of Guatemala: overcoming discrimination in the framework of the peace agreements, September 2001. Available at www.minugua.guate.net.

[8] Documents transmitted to the Special Rapporteur by the Asamblea Nacional Indígena Plural por la Autonomía (ANIPA), the Centro de Derechos Humanos Miguel Agustín Pro Juárez and other organizations.

[9] Statement by Survival International at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 31 August-7 September 2001).

[10] Report to the Special Rapporteur prepared by Ms. Maureen Tong, Deputy Director of the Centre for Human Rights, University of Pretoria, South Africa.

[11] Ibid.

[12] Communications addressed to the Special Rapporteur, Geneva, July 2001.

[13] Tong, op. cit.

[14] African Commission on Human and People's Rights, Thirteenth Activity Report, annex 5, para. 137. Cited in Tong, op. c't.

[15] See http://www.hrw.org/press/2001/05/cambodia-0521.htm.

[16] Statement by Dr. Vuag Pobzeb of the Lao Human Rights Council at the United Nations Working Group on Indigenous Populations at its 2001 session.

[17] See reports of the Montagnard Foundation submitted to the United Nations; also see International Commission of Jurists, *Report by the Western Australian Branch of the International Commission of Jurists concerning Sterilisations of Ethnic Montagnards in the Central Highlands of Vietnam: October 2000.*

[18] Report of the Special Representative of the Secretary-General for Human Rights in Cambodia (E/CN.4/1998/95), paras. 147, 158-160.

[19] Human Rights Watch, *2001 World Report*, p. 167.

[20] All the indigenous groups of peninsular Malaysia are called Orang Asli. For more information, see Minority Rights Group, *Forests and Indigenous Peoples of Asia*, London, 1999.

[21] Statement by Joan Carling of the Cordillera Peoples Alliance at the United Nations Working Group on Indigenous Populations, 27 July 2001.

[22] Dario Novellino, "The ominous switch: from indigenous forest management to conservation. The case of the Batak on Palawan island, the Philippines", Marcus Colchester and Christian Erni (eds.), *Indigenous peoples and Protected Areas in South and Southeast Asia*, International Work Group on Indigenous Affairs, Document No. 97, Copenhagen, 1999, pp. 250-297.

[23] Human Rights Watch, Asia, *The Philippines, Human Rights and Forest Management in the 1990s*, April 1996; Geoff Nettleton, *Mountains of gold, the mining threat to tribal peoples in the Philippines*, Survival International 1996; Victoria Tauli-Corpuz, "The resistance of the indigenous peoples in Asia against racism and racial discrimination", *Indigenous Affairs*, vol. 1, 2001, pp. 43-53.